

PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS FOR CRIMINAL CASES

The Uniform Jury Instructions for Criminal Cases Committee has recommended a proposed new chart regarding sex offender registration and notification, and proposed new jury instructions regarding failure to register as a sex offender, for the Supreme Court's consideration.

If you would like to comment on the proposed new material set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://nmsupremecourt.nmcourts.gov/> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 6, 2016, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

[NEW MATERIAL]

14-990. Chart.

SECTIONS 29-11A-4 & -4.1 NMSA 1978 SEX OFFENDER REGISTRATION & NOTIFICATION¹

	SORNA Versions			
	1999	2000	2005 & 2007	2013
Applicability: applicable to a person convicted of a sex offense who:	Convicted on or after July 1, 1999, subject to subsequent provisions of the 2000 version.	Convicted on or after July 1, 1995, and persons convicted prior to July 1, 1995, and still incarcerated or on probation or parole.	Convicted on or after July 1, 2005, and a person convicted prior to July 1, 2005, who was still incarcerated or on probation or parole.	On or after July 1, 2013, is found guilty of committing a sex offense.

Included Offenses (NMSA 1978, §§ 29-11A-3 and -5). Period of Renewal (NMSA 1978, § 29-11A-4).				
Attempt to commit offenses have same registration period as the actual offense.	same	same	same	same
CSP, 1st degree. NMSA 1978, § 30-9-13.	20 years, annually	20 years, annually	life, 90 days	life, 90 days
CSP, 2nd degree. NMSA 1978, § 30-9-13.	20 years, annually	20 years, annually	life, 90 days	life, 90 days
CSP, 3rd degree. NMSA 1978, § 30-9-13.	10 years, annually	10 years, annually	life, 90 days	life, 90 days
CSP, 4th degree. NMSA 1978, § 30-9-13.	10 years, annually	10 years, annually	10 years, annually	10 years, every 6 months
Aggravated CSP; 1st, 2nd, 3rd degrees. NMSA 1978, § 30-9-11.	N/A	N/A	life, 90 days (beginning 2007)	life, 90 days
CSC, 4th degree. NMSA 1978, § 30-9-12.	10 years, annually	10 years, annually	life, 90 days	life, 90 days
CSCM, 2nd Degree. NMSA 1978, § 30-9-13.	N/A	N/A	life, 90 days	life, 90 days

Included Offenses & Period of Renewal (continued)	1999	2000	2005 & 2007	2013
CSCM, 3rd degree. NMSA 1978, § 30-9-13.	20 years, annually	20 years, annually	life, 90 days	life, 90 days
CSCM, 4th degree. NMSA 1978, § 30-9-13.	10 years, annually	10 years, annually	life, 90 days	life, 90 days
Sexual exploitation of children. NMSA 1978, § 30-6A-3.	20 years, annually	20 years, annually	life, 90 days	life, 90 days
Kidnapping when victim is less than 18 and offender is not the parent of victim. NMSA 1978, § 30-4-1.	N/A	20 years, annually	life, 90 days	life, 90 days
Sexual Exploitation of children by prostitution. NMSA 1978, § 30-6A-4.	10 years, annually	10 years, annually	10 years, annually	10 years, every 6 months
Solicitation to commit 2nd, 3rd, or 4th degree CSCM. NMSA 1978, §§ 30-9-13 & 30-28-1. (2nd added in 2005)	10 years, annually	10 years, annually	10 years, annually	10 years, every 6 months

Included Offenses & Period of Renewal (continued)	1999	2000	2005 & 2007	2013
False imprisonment when victim is less than 18 and offender not a parent of victim. NMSA 1978, § 30-4-3; including attempt.	N/A	10 years, annually	10 years, annually	10 years, every 6 months
Aggravated indecent exposure. NMSA 1978, § 30-9-14.3.	N/A	N/A	10 years, annually	10 years, every 6 months
Enticement of a Child. NMSA 1978, § 30-9-1.	N/A	N/A	10 years, annually	10 years, every 6 months
Incest when victim under 18. NMSA 1978, § 30-10-3.	N/A	N/A	10 years, annually	10 years, every 6 months
Second or subsequent sex offense. NMSA 1978, § 29-11A-4(M).	N/A	N/A	life, 90 days	life, 90 days
Child solicitation by electronic commc'n device. NMSA 1978, § 30-37-3.2.	N/A	N/A	N/A	10 years; every 6 months ²

Trigger Registration and/or Notice	1999	2000	2005 & 2007	2013
Register from release from custody of corrections department or being placed on probation or parole. NMSA 1978, § 29-11A-4(B).	10 days	10 days	see below	see below
Register from release from custody of corrections department, municipal or county jail; or a federal, military or tribal correctional facility or detention center; or being placed on probation or parole. NMSA 1978, § 29-11A-4(B).	N/A	N/A	10 days	5 business days
Changes Residence to New Mexico. NMSA 1978, § 29-11A-4(B).	10 days	10 days	10 days	5 business days
Resident of another state, but working or employed in New Mexico. NMSA 1978, § 29-11A-4(D).	10 days	10 days	10 days	5 business days

Trigger Registration and/or Notice (continued)	1999	2000	2005 & 2007	2013
Changes residence within County. NMSA 1978, § 29-11A-4(F).	10 days	10 days	10 days	5 business days
Changes residence to new County. NMSA 1978, § 29-11A-4(G).	10 days (both new and old county)	10 days (both new and old county)	10 days (both new and old county)	5 business days (both new and old county)
Does not have established residence (shelter, halfway house, transient); register each county temporarily living in. NMSA 1978, § 29-11A-4(H).	N/A	N/A	10 days after change in temporary location	5 business days after change in temporary location
Attending institution of higher learning. Notify: (1) local county sheriff, (2) institution's law enforcement entity, and (3) registrar. NMSA 1978, § 29-11A-4(I).	N/A	N/A	10 days from start and 10 days from any change	5 business days from start and 5 business days from change

Trigger Registration and/or Notice (continued)	1999	2000	2005 & 2007	2013
School employment, notice to school and principal. NMSA 1978, § 29-11A-4(J).	N/A	N/A	10 days from start and 10 days from any change	5 business days from start and 5 business days from change
Notice to employer immediately (whether compensated or volunteers). NMSA 1978, § 29-11A-4(K).	N/A	N/A	Immediately	Immediately
Moves out of New Mexico. Notify county sheriff where currently resides and identify state moving to. NMSA 1978, § 29-11A-4.1.	N/A	30 days prior to move	30 days prior to move	30 days prior to move
Penalties	1999	2000	2005 & 2007	2013
Failure to Comply. NMSA 1978, § 29-11A-4.	willfully, misdemeanor	willfully, 4th degree felony	willfully or knowingly. 1st violation: 4th degree felony; subsequent violation: 3rd degree felony	willfully or knowingly. 1st violation: 4th degree felony; subsequent violation: 3rd degree felony

Penalties (continued)	1999	2000	2005 & 2007	2013
Provides false information. NMSA 1978, § 29-11A-4.	misdemeanor	willfully, 4th degree felony	willfully or knowingly. 1st violation: 4th degree felony; subsequent violation: 3rd degree felony.	willfully or knowingly. 1st violation: 4th degree felony; subsequent violation: 3rd degree felony.
Failure to provide notice of moving from New Mexico. NMSA 1978, § 29-11A-4.1.	N/A	willfully, misdemeanor	willfully, 4th degree felony	willfully, 4th degree felony

USE NOTE

1. New Mexico's Sex Offender Notification and Registration Act ("SORNA") has been amended multiple times since it first was enacted. Different versions of SORNA also impose different requirements on someone subject to its provisions. Consequently, the necessary first step in correctly instructing a jury on the essential elements of an alleged SORNA violation is to identify which version of the statute applies. This chart is to be used to determine which version of the statute applies and to provide guidance in selecting the correct elements instruction from the instructions that follow. When using the chart to determine the applicable version of SORNA, it is important to first look at when a person was convicted of a sex offense as well as when a person completed their sentence for that sex offense. Second, it is important to determine whether or not the "sex offense" was a registerable offense under the applicable version of SORNA before proceeding further.

2. Child solicitation by electronic device was added in 2013 to the list of registerable sex offenses but not incorporated into NMSA 1978, Section 29-11A-5(D) or (E) for purposes of length of registration period. Previously in 2007, the Legislature added child solicitation by electronic communication device under Section 29-11A-5(E), requiring a ten (10)-year registration period, but it failed to become law. *See State v. Ho*, 2014-NMCA-038. Based on this legislature history it appears the legislative intent of the 2013 amendment is to require a ten (10)-year registration period.

[Adopted by Supreme Court Order No. _____, effective _____.]

Committee commentary. — New Mexico's first Sex Offender Registration Act (SORA) was enacted on July 1, 1995, in response to the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Program. Under the original SORA, the legislature listed 5 offenses that would require registration: (1) criminal sexual penetration in the first, second, third or fourth degree, as provided in Section 30-9-11 NMSA 1978; (2) criminal sexual contact in the

fourth degree, as provided in Section 30-9-12 NMSA 1978; (3) criminal sexual contact of a minor in the third or fourth degree, as provided in Section 30-9-13 NMSA 1978; (4) sexual exploitation of children, as provided in Subsection A, B or C of Section 30-6A-3 NMSA 1978; and (5) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978.

Subsequent amendments were made to SORA and in 1999, the Legislature amended SORA to what has now become SORNA—Sex Offender Registration and Notification Act. Major changes again were made in 2000, 2005, 2007, and 2013.

Laws 1999, Chapter 19, Section 11 provided that “Sections 1 through 9 of this act apply to persons convicted of a sex offense committed on or after July 1, 1999. As to persons convicted of a sex offense committed prior to July 1, 1999, the laws with respect to registration requirements for sex offenders in effect at the time the sex offense was committed shall apply.” The changes went into effect on July 1, 1999. Due to the changes of applicability in the 2000 version, expressly allowing for retroactivity, the 1999 version has been superseded by the 2000 version. *See State v. Druktenis*, 2004-NMCA-032, 135 N.M. 223.

Laws 2000, Chapter 8, Section 9 provided that “the provisions of this 2000 version of the Sex Offender Registration and Notification Act apply to: A. persons convicted of a sex offense on or after July 1, 1995; and B. persons convicted of a sex offense prior to July 1, 1995 and who, on July 1, 1995, were incarcerated, on probation or on parole.” The changes went into effect on July 1, 1999. Based on the applicable statute, any person who completed their sentence, including probation and parole, prior to July 1, 1995 has no registration obligation.

Laws 2005, Chapter 279, Section 14 provided that “the provisions of this 2005 version of the Sex Offender Registration and Notification Act are applicable to: A. a person convicted of a sex offense on or after July 1, 2005; and B. a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.” The changes went into effect on July 1, 2005.

In 2007, there was a change to Section 29-11A-3 to add “aggravated criminal sexual penetration,” which became a new offense pursuant to Section 30-9-11. Laws 2007, Chapter 69, Section 8 provided that “the provisions of Section 5 of this act are applicable to: A. a person convicted of a sex offense on or after July 1, 1995; and B. a person convicted of a sex offense prior to July 1, 1995 and who, on July 1, 1995, was still incarcerated, on probation or on parole for commission of that sex offense.” Since Chapter 69, Section 5, only deals with Section 29-11A-3—Definitions and adds “aggravated criminal sexual penetration,” this doesn’t affect the prior applicability of the 2005 version. Therefore, the Chart reflects the 2005 and 2007 versions of SORNA in the same column.

Laws 2013, Chapter 152, Section 5 provided that “the provisions of these 2013 amendments to the Sex Offender Registration and Notification Act are applicable to a person who, on or after July 1, 2013, is found guilty of committing a sex offense.” The changes went into effect on July 1, 2013. The application of the 2013 version was not made retroactive to those offenders who were still serving their sentence or on probation or parole. Therefore, those offenders convicted prior to July 1, 2013, would still fall under one of the prior versions of SORNA.

[Adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

14-991. Failure to register as a sex offender; 1999 and 2000 versions of SORNA; essential elements.¹

For you to find the defendant guilty of failure to register as a sex offender [as charged in Count _____]², the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant was convicted of [_____]³;
2. The defendant was [residing] [employed] [attending school]⁴ in New Mexico between _____, _____ and _____⁵;
3. The defendant [triggering event] on [date]⁶;
4. The defendant did not register with the county sheriff prior to _____⁷;
5. The defendant willfully failed to register; and
6. This happened in New Mexico between _____, _____ and _____.

USE NOTE

1. For use for offenders required to register under the 1999 and 2000 versions of SORNA. Threshold questions of law must be determined before the jury may be instructed. The chart included as UJI 14-990 NMRA is a tool to aid in determining which version of the statute, and thus which UJI, applies.

2. Insert the count number if more than one count is charged.

3. If there is a stipulation that the offense was a registrable offense under SORNA, insert “a sex offense on ____ (date).” If there is no stipulation, insert the name of the prior offense and date of conviction.

4. Use applicable alternative or alternatives.

5. Enter relevant dates. Once the applicable statute is identified, calculating the dates triggering registration obligations vary, so that the date of an actual registration requirement involves a threshold legal determination based on the completion of sentence or release from physical custody.

6. Describe event triggering registration or notice requirement (Ex: changing residence); and include date triggering registration or notice requirement. *See* Use Notes 1, 5; UJI 14-990 (Chart).

7. Enter date defendant registration is alleged to have been required. *See* Use Notes 1, 5; UJI 14-990 (Chart).

[Adopted by Supreme Court Order No. _____, effective _____.]

Committee commentary. — As outlined in Use Note 1, many of the statutory elements of Failure to Register are legal questions, such as whether registration was required in the first place. The Committee determined that the jury is ill-equipped to make such legal determinations, and therefore provided as many resources as possible to aid parties and judges in correctly determining both the applicable version of SORNA, and the defendant's specific legal obligations in a particular case. For jury instruction purposes, the Committee identified the following primary factual findings in element one: (1) the identity of the crime of conviction, (2) when the defendant was convicted, and (3) when the defendant completed serving the underlying sentence.

The relevant legal questions include (1) whether the underlying sex offense carries a registration requirement at all, (2) whether the “triggering” event creates a registration requirement under the applicable statute; (3) the duration of the registration obligation (and thus whether that requirement was still in effect at the time of the alleged failure), and (4) the frequency of the registration requirement (as it informs the applicable registration deadline). While these

determinations will require judicial fact-finding, because they are threshold questions of law, they must be determined before submitting a charge to the jury, and indeed, directly determine the elements contained in the jury instructions.

The requisite jury findings informing the legal determination are included in elements 1, 2, and 3. However, the court must ultimately determine whether, legally, the defendant has been convicted of a valid sex offense requiring registration.

Instructions regarding the underlying sex offense.

The name of the prior felony conviction is not necessary. If the defendant stipulates to the commission of the underlying offense, evidence of the nature of defendant's predicate felony convictions is irrelevant and prejudicial under evidence Rule 11-403 NMRA. *See State v. Tave*, 1997-NMCA-056, 122 N.M. 29, 919 P.2d 1094; *accord, Old Chief v. United States*, 519 U.S. 172 (1997).

If the defendant does not stipulate to the prior offense, the state may prove the prior offense by documentary or other evidence which satisfies the rules of evidence. Under NMSA 1978, Section 29-11A-3, the definition of "conviction" requires that the defendant must have been sentenced for the predicate sex offense including a suspended or deferred sentence, but does not include a conditional discharge. *See State v. Brothers*, 2002-NMCA-110, ¶¶ 9-10, 133 N.M. 36, 59 P.3d 1268 (declining to find deferred sentence results in eradication of conviction for purposes of sex offender registration, in part, because to do so would make deferred sentence no different than a conditional discharge); *State v. Herbstman*, 1999-NMCA-014, ¶ 11, 126 N.M. 683, 974 P.2d 177 (finding conditional discharge is not a conviction for purposes of sex offender registration).

Determining equivalency of sex offenses

An offense is "equivalent" to a New Mexico offense, for purposes of the New Mexico Sex Offender Registration and Notification Act, if the defendant's actual conduct that gave rise to the out-of-state conviction would have constituted one of the enumerated offenses requiring registration pursuant to the Act. *See State v. Hall*, 2013-NMSC-001, 294 P.3d 1235 (outlining methods of proving underlying conduct aligning with a New Mexico statutory offense); *see also, State v. Orr*, 2013-NMCA-069, 304 P.3d 449 (remanding to trial court to determine under *Hall* whether defendant's conduct associated with a North Carolina conviction for taking indecent liberties with children was equivalent to any of the enumerated offenses under SORNA.).

[Adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

14-992. Failure to register as a sex offender; 2005, 2007, and 2013 versions of SORNA; essential elements.¹

For you to find the defendant guilty of failure to register as a sex offender [as charged in Count _____]², the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant was convicted of [_____]³;
2. The defendant was [residing] [employed] [attending school] [temporarily located]⁴ in New Mexico between _____, _____ and _____, _____⁵;
3. The defendant [triggering event] on [date]⁶;
4. The defendant did not register with the county sheriff prior to _____⁷;
5. The defendant willfully or knowingly failed to register; and
6. This happened in New Mexico between _____, _____ and _____, _____.

USE NOTE

1. For use for offenders required to register under the 2005, 2007, and 2013 versions of SORNA. Threshold questions of law must be determined before the jury may be instructed. The chart included as UJI 14-990 NMRA is a tool to aid in determining which version of the statute, and thus which UJI, applies.

2. Insert the count number if more than one count is charged.

3. If there is a stipulation that the offense was a registerable offense under SORNA, insert “a sex offense on _____ (date).” If there is no stipulation, insert the name of the prior offense and date of conviction.

4. Use applicable alternative or alternatives.

5. Enter relevant date(s). Once the applicable statute is identified, calculating the dates triggering registration obligations vary, so that the date of an actual registration requirement involves a threshold legal determination based on the completion of sentence or release from physical custody.

6. Describe event triggering registration or notice requirement (Ex: changing residence); and include date triggering registration or notice requirement. *See* Use Notes 1, 5; UJI 14-990 (Chart).

7. Enter date defendant registration is alleged to have been required. *See* Use Notes 1, 5; UJI 14-990 (Chart).

[Adopted by Supreme Court Order No. _____, effective _____.]

Committee commentary. — *See* UJI 14-991 NMRA committee commentary.

[Adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

14-993. Providing false information when registering as a sex offender; essential elements.¹

For you to find the defendant guilty of providing false information when registering as a sex offender [as charged in Count _____]², the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant was convicted of [_____]³;

2. The defendant [willfully] [or] [knowingly]⁴ provided false information when registering as a sex offender on _____;⁵ and

3. This happened in New Mexico [on _____, _____] [between _____, _____ and _____, _____].

USE NOTE

1. Applicable to all versions of SORNA.

2. Insert the count number if more than one count is charged.

3. If there is a stipulation that the offense was a registerable offense under SORNA, insert “a sex offense on _____ (date).” If there is no stipulation, insert the name of the prior offense and date of conviction.

4. Use applicable alternative or alternatives depending on the applicable version of SORNA. The chart included as UJI 14-990 NMRA is a tool to aid in determining which version of the statute applies.

5. Insert date of registration depending on the applicable version of SORNA.

[Adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

14-994. Failure to notify county sheriff of intent to move from New Mexico to another state, essential elements.¹

For you to find the defendant guilty of failing to notify county sheriff of intent to move from New Mexico to another state [as charged in Count _____]², the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant was convicted of [_____] ³;
2. The defendant moved to _____ ⁴ on _____; ⁵
3. Prior to moving, the defendant resided in _____ County;
4. Defendant willfully failed to [notify the county sheriff of his or her intent to move to another state] ⁶ [or] [provide written notice to the county sheriff identifying the state to which defendant intended to move] at least thirty (30) days prior to moving; and
5. This happened in New Mexico between _____, _____ and _____, _____.

USE NOTE

1. For use for defendants required to register under the 2000 version of SORNA and forward.
2. Insert the count number if more than one count is charged.
3. If there is a stipulation that the offense was a registerable offense under SORNA, insert “a sex offense on _____ (date).” If there is no stipulation, insert the name of the prior offense and date of conviction.
4. Insert state to which defendant moved.
5. Insert date defendant moved.
6. Use applicable alternative or alternatives.

[Adopted by Supreme Court Order No. _____, effective _____.]

